

**WEST TISBURY ZONING BOARD OF APPEALS
MINUTES OCTOBER 18
TOWN HALL 7 PM**

PRESENT: Eric Whitman (Chair), Tucker Hubbell, Bob Schwier, Larry Schubert, Toni Cohen

ABSENT: Tony Higgins, Nancy Cole

ALSO PRESENT for All or Part of the Meeting: Ellen Wolfe, Judy Hartford, Marla Blakeley, Holly Alaimo, Frank Ferro, Ursula Ferro, Gayle Rogers, Donnie Mills, Kristen Kinser

BUSINESS

- The minutes of Sept. 27 and Oct 4 were approved as corrected.
- Marsha Wynsrig: Referred to talk with ZBA by Zoning Inspector. Has sales of African art at her home two to three times a year; she's a registered non-profit; all proceeds to an orphanage, etc. Julie suggested she talk with Planning Board as in ZBL under Community use, Educational/Charitable/Religious could be allowed by Plan Review. ZBA members thought Marcia's sales are yard sales and would just need a yard sale permit.
- Julie reported a brief discussion with Planning Board office that South Mountain Co. owner John Abrams told Planning Board he'd like to create an affordable lot for an employee, but have it be a half acre rather than the required one acre minimum. Planning Board members had said he'd have to comply with this requirement, but John said he might seek a Variance with the ZBA. ZBA briefly discussed that the topography, shape and soil of the lot didn't have hardships unique to the area and since it would be an amendment of a Comprehensive Permit, it would in any event have to go to the MV Commission first.

HEARINGS

7:30 Continuation from September 27 of an application filed by Ellen Wolfe to amend a Special Permit granted in April, 2002 regarding the alteration and extension in use to the premises at 632 State Rd, Map 22 Lot 47 ("Farmer Greene's former store"); The applicant would like to have clarified what can be sold under the term "gallery" and to be able to continue selling clothing at the premises; under Section 9.3-3. of the Zoning Bylaws; RU District. Donnie Mills owned the property at the time of the '02 Special Permit; his wife, Kristen Kinser, now holds title to the property.

See Sect 9.3-1C2

See 11.1-3A and 11.1-4A

Original Special Permit; Original request from Donnie Mills; Statement from Ellen Wolfe, and,

Correspondence: In Favor: 1) Owner Kristen Kinser and Donnie Mills; 2) Abutters Deborah Withers and Lydia and Richard Olsen; 3) Abutter Linda McGuire 4) West Tisbury Resident Joan Thomas; 5) WTR Helene Brown and Henry Kudish; 6) WTR Kay Leaird ; 7) WTR Leslie Simmons; 8) WTR Susan Gilbert; 9) WTR Sheila and Sandy Shapiro; 10) WTR Susan Feller; 11)WTR Charles Giordano; 12) WTR Margery Ablon; 13)WTR Jenny Devivo; 14) WTR Harriet Bernstein; 15) WTR Alan Brighish. **Not in Favor:** 1) Planning Board, letters of July 26 and Sept. 27, and minutes.

Post meeting, in favor, 1) Sally and Dan Tanner (Tisbury residents); 2) WTR Annie Shwenk, **Statement** from Donnie Mills and Kristen Kinser and **statement** from Ellen Wolfe and Judy Hartford. All correspondence on file in ZBA office and available to be read.

Eric Whitman opened the hearing; the notice was read. New correspondence and previous Planning Board correspondence were read aloud, as were new statements from Donnie Mills and Kristen Kinser and from Ellen Wolfe and Judy Hartford. In part, Donnie and Kristen stated that in order for the farm stand to survive over many years, they had to buy a variety of things and produce to sell; a relatively small portion was produced on their land. A lot of their time was taken up with managing the retail end, not growing things; that a farm stand there couldn't make a profit today without a septic upgrade and a kitchen. They likened their current tenant, the Bananas gallery, to being in the

same situation; trying to make a business viable with “individually made, atelier produced artwork...and some not.” They praised these tenants for running a successful business without changing the character of the property or the neighborhood, for keeping a low-key business. They wrote they understood that abutter and public support means a lot in a decision, and they felt the response had been one of support.

In part, Ellen and Judy’s statement said “...terms associated with “wearable art” are: small batch, one-off, hand woven, hand dyed, limited edition, hand-knit, original, artist made, custom made...” They wrote of art museums’ exhibits of contemporary fashion. They said they did not wish to be misleading, they do not claim that every item falls into the “wearable art” category. They asked that the ZBA decision be based on whether they offered the community a “gallery” experience.

Eric Whitman told the gathering that the ZBA had met with the Planning Board since the last hearing. The Planning Board were not in favor of clothing being sold on the site, that strictly speaking it must be an art gallery or an antiques store. They said they would work on looking at the zoning in place for the area, to see if there should be change, but this is in general, there is no time line. (Currently retail use in the RU District is confined to agriculture and home occupations, both through Special Permits and narrowly defined). He said the Board would listen to any new testimony, then he would close the hearing and call for a vote.

Donnie Mills spoke: He wanted the Board to know that this hearing, their decision had huge ramifications for him and his family, it’s not just a zoning issue to them. Their way of life will be upset if they do not have a tenant for their building. Ellen Wolfe and Judy Hartford might leave (if they can’t modify the permit) and they might not find another tenant as respectful of the neighborhood. They home school their children; a denial by the ZBA would have a huge financial impact on them as the rent is a big portion of their income, they’d need to work off their land, and be unable to home school. The rent makes it possible to continue agriculture work on their properties. He compared having a couple mannequins on the porch and clothing to some of the home business landscaping companies that start their engines and load up at 7 AM, lots of equipment, etc. He could do a landscaping business there; he doesn’t want a landscaping business there.

Larry asked if they could talk compromise...add conditions, for example limit the clothing to up to 40%. He would be in favor of amending the special permit. He wouldn’t want to see an empty space there, and he’s sure the neighbors don’t want the gallery to get any bigger.

Tucker Hubbell said he keeps coming back to that it was a farm stand, selling agriculturally produced goods, some from the land, some not. Antiques, some groceries, some art may have been sold there, but it was still a farm stand. He felt ZBA would not have granted the change to retail use, art gallery and /or antiques store, without the testimony of two of the Planning Board members. That testimony swayed him; the ZBA voted for it. He feels now that they shouldn’t have. He said he’s been in (to Bananas) twice, it’s a nice store, has some beautiful things, he doesn’t object to the store, but we can’t re-write the Bylaw; the uses aren’t allowed in this district. He would define Bananas as morphed into something not allowed. He’d call it a boutique. He supports the idea of it returning to a farm stand.

Owner Kristen Kinser spoke: To remain a viable business as a farm stand, the property and stand would have to change, grow...talk to Robert Skydell. They want the small scale, the look of the funky store, the quiet of how the building is being used now; they have turned down prospective clients who wanted to make substantial changes to the property. Tucker said he realized how important this is to them.

Bob Schwier said zoning can’t be flexible from property to property; it’s spot zoning unless applied

uniformly. The Town can change zoning by voting for a change to the bylaws. He said, back to the conditions, how would you condition it without knowing and checking the inventory? Judy Hartford said, you have a lot of evidence of our (good) character; they would keep their word. Bob replied, yes, but there are those who will follow you. Marla Blakeley said she has worked for Ellen for years, and Judy. They've always sold artwork from artists around the island; they'd never decide to have just a clothing store.

Toni Cohen spoke: If this is denied and the Planning Board presents a change in zoning and the Town votes to approve, and these two owners have given up this space, they'd be victims, not heroes (for bringing about the change). Frank Ferro said, bring a zoning question to the Town whether or not you want to turn North Tisbury into a commercial area or everyone be residential. It should affect all the properties in the district, not just those few that are pre-existing. He said he had a lot that he can't build on and no grandfathered use; it's not fair.

Eric Whitman said, this is the most harmless business. He proposed that the ZBA give them a Special Permit for one year and condition it that they cannot increase the amount or kind of clothing from what they sold this year. If no changes occur regarding businesses in this district, the Special Permit would be up next October. It would be tremendously unfair to have a vote at Town Meeting to allow clothing sales, and these applicants had lost out.

Larry spoke: A main reason why he would give a yes vote to this application is because the ones who complained about this business have been a phantom entity throughout; they didn't come to the hearings; we never got a letter; there's been no input. Ernie went on a site visit because the Planning Board said they'd had complaints; he made a decision that the ZBA should resolve this. Kristen said, they'd listed to Ernie three years ago what would be sold, and he hadn't objected. Larry asked if their clothing had increased incrementally, perhaps it was not so large a part 3 years ago? Ellen replied that the clothing percentage had increased incrementally.

Eric suggested that the mannequins not be on the porch and that Toni Cohen, once in retail herself, be appointed to monitor that clothing did not exceed 40%. Toni Cohen added they should never use the sandwich board sign again, particularly since it lists clothing on the top line.

The hearing was closed and the motion to vote was for an amended Special Permit good until Oct 18, 2007: To be able to include clothing, of the kind as submitted in Ellen Wolfe's two statements, for up to 40% of the gallery's inventory. The conditions would be that the permit is good for one year, and the store size remains the same. If there is a change in zoning that would allow retail in this district, the applicants may reapply for the use. On the grounds that it would not be more detrimental to the neighborhood, would be fair to the applicants, and would help toward a resolution for zoning in the area, the ZBA voted unanimously to grant the one-year Special Permit with conditions.

Ellen Wolfe, Judy Hartford, Donny Mill and Kristen Kinser thanked the Board for their flexibility. ZBA members suggested that they and their neighbors talk with the Planning Board if they want to initiate change.

OTHER CORRESPONDENCE

- Letter from CHAPA defining their role as Monitoring Agent for Paquette's one affordable property at Pin Oak Circle
- JC Murphy, request for minutes, and copy of his Oct. 4 letter

The meeting was adjourned at 8:45 PM.

Respectfully submitted, Julie Keefe, Board Administrator